

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARIO HUERTA-RODRIGUEZ,

Petitioner,

Case No. 08-13263
HON. GEORGE CARAM STEEH

vs.

GREGORY MCQUIDGIN,

Respondent.

/

ORDER ACCEPTING AND ADOPTING REPORT AND RECOMMENDATION [Dkt.#20],
GRANTING PETITIONER'S MOTION FOR ENLARGEMENT OF TIME [#21] AND
DENYING PETITIONER'S MOTION FOR STAY [#19]

I. INTRODUCTION

On September 8, 2011, Magistrate Judge Paul Komives filed a report and recommendation recommending that the court deny petitioner's motion for stay. On October 20, 2011, petitioner filed a response to the magistrate judge's report and recommendation, which the court will construe as petitioner's objection to the report and recommendation.¹

The instant matter arises out of petitioner's July 1999 conviction for assault and various firearms offenses. This court denied petitioner's application for a writ of habeas

¹ On October 13, 2011, petitioner filed a motion for enlargement of time to file his response to the magistrate judge's report and recommendation. The court GRANTS petitioner's motion for enlargement of time.

corpus as untimely under 28 U.S.C. § 2244(d) and denied petitioner a certificate of appealability on August 25, 2009. The United States Court of Appeals for the Sixth Circuit denied petitioner's request for a certificate of appealability on August 3, 2010. It appears that petitioner's present motion to stay requests that this court stay proceedings relevant to his federal habeas corpus petition in the United States Supreme Court pursuant to Supreme Court Rule 23.3.

II. ANALYSIS

A. Standard of Review

The standard of review to be employed by the court when examining a report and recommendation is set forth in 28 U.S.C. § 636. This court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). This court "may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." Id.

B. Petitioner's Motion to Stay

The magistrate judge is correct that Rule 23.3 does not authorize a district judge to issue a stay. Further, Federal Rule of Civil Procedure 62 is inapplicable as there is no judgment to "execute" here, nor has petitioner filed a post-judgment motion necessitating a stay to preserve the status quo. See Fed. R. Civ. P. 62. A review of petitioner's response, construed as his objection to the report and recommendation, confirms that petitioner's motion to stay is actually a motion for reconsideration of this court's August 25, 2009 order and judgment denying his application for a writ of habeas corpus. The magistrate judge correctly concluded that even if petitioner had properly moved under Rule

60 for relief from judgment, he has not presented any arguments that have not already been considered and rejected by this court. See Fed. R. Civ. P. 60. Petitioner's motion for stay has no merit and is therefore denied.

III. CONCLUSION

For the reasons set forth above, Magistrate Judge Paul Komives's September 8. 2011 report and recommendation is ACCEPTED and ADOPTED as this court's conclusions of law.

Petitioner's motion for enlargement of time to file response is GRANTED.

Petitioner's motion to stay is DENIED.

SO ORDERED.

Dated: December 19, 2011

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on December 19, 2011, by electronic and/or ordinary mail and also to Mario Huerta-Rodriguez at Kinross Correctional Facility, 16770 S. Watertower Drive, Kincheloe, MI 49788.

S/Josephine Chaffee
Deputy Clerk